

BOOK 2887 PAGE 307

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE RIVER BIRCH SUBDIVISION

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PRESENTED
FOR
RECORD
DEC 16 12 24 PM '80
WAKE COUNTY, N.C.

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR RIVER BIRCH
SUBDIVISION.

THIS DECLARATION, made on the date hereinafter set forth by RIVER BIRCH ASSOCIATES, a Partnership, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Raleigh Township, County of Wake, State of North Carolina, which is more particularly described as:

See Exhibit A Hereto.

AND WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following covenants, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to River Birch Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real

property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

See Exhibit B Hereto.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to River Birch Associates, a Partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) Upon proper notice to the City of Raleigh's Planning Office the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such

dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of members;

(e) The right of the individual members to the exclusive use of parking spaces as provided in this Article.

(f) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate to the rights of the non owners hereunder.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility and drainage easements.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association shall permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats or trailers shall be parked within the right of way of any public street in or adjacent to River Birch Subdivision.

Section 5. TV Antennas and Piped-In Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music and the cost of these may be

Included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On October 31, 1983.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article II, Section 1(b).

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of

Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, including but not limited to, the payment of insurance premiums, local taxes and public assessments on the Common Area, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis and Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be SIX HUNDRED AND SIXTY DOLLARS (\$660.00) per Lot.

(a) From and after January 1, 1981, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, plus ten percent (10%) of such rise, of the Consumer Price Index (published by the Department

of Labor, Washington, D.C.) (or such index as may succeed the Consumer Price Index) for the preceding month of July.

(b) From and after January 1, 1981, the maximum annual assessments may be increased above that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to the members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Quorum for any Action Authorized Under Sections 3 and 4. At the first such meeting called, as provided in Sections 3 and 4 hereof, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting

shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyances of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or

any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated in fee to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

EXTENDED FIRE AND LIABILITY INSURANCE COVERAGE

The Association shall maintain for one year immediately following the conveyance of the first lot to an Owner a Blanket Special Multi-Peril insurance policy with extended fire and liability coverage on all lots and building units. The Association shall assess each Owner according to their pro-rata share.

After the end of the first year, the Association shall elect to continue the Blanket Special Multi-Peril coverage or to require each Owner to provide adequate individual fire and liability coverage, provided that any such election shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to the members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of

liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. The owner of any Lot may construct, reconstruct or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and

without charge; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VIII

MAINTENANCE OF ACCESS ROUTES

In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners association, or occupants.

The Association shall have the authority to maintain and repair inadequate access routes and to prevent blocking of access routes to and from the Properties.

ARTICLE IX

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building or structure other than single-family townhouses joined together by a common exterior roof shall be constructed on any Lot. No structures of a temporary character, trailer, tent, shack, barn, shed or other outbuilding shall be used on any portion of the Properties or on any Lot. It is expressly understood and agreed, however, that Declarant's use of any Lot or any other part of the Properties as a Sales Office, Construction Office, Storage Area, Business Office, Model Unit or such other facility as in the sole opinion of Declarant is reasonably necessary, convenient or incidental to the sale of the Lots during the time Declarant owns any Lot in the Properties shall not be considered a violation of this restriction.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may

become an annoyance or nuisance to neighboring Owners or to residents of any part of the Properties or which may endanger the health or safety of any Owner or any resident of the Properties.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except small household pets, weighing no more than twenty (20) pounds each, which pets may not be kept or bred for any commercial purpose and shall have such care and restraint that they will not be obnoxious or offensive on account of noise, odor or unsanitary conditions. No savage or dangerous animal shall be kept. No more than one household pet may be kept on any Lot without written permission of the Board of Directors of the Association. No pets may be permitted to run loose upon the Common Area, and any Owner who causes any pet to be brought or kept on his Lot shall indemnify and hold harmless the Association for any loss, damage or liability which the Association may sustain as a result of the presence of such animal on the premises, whether or not the Association has given its permission therefor.

Section 4. Alterations and Attachments by Owner. No Owner shall make structural alterations or modifications to the improvements on his Lot or to any of the Common Area, including the erection of awnings, the placement of any reflective or other material in the windows of his dwelling (other than draperies), the installation of aluminum (or similar material) storm doors in any dwelling or other exterior attachments without the written approval of the Board of Directors of the Association. The Board shall not approve any alterations, decorations or modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Properties.

Section 5. Use of Common Area. The Common Area shall not be used for storage of supplies, personal property or trash or refuse of any kind except in Common Area trash receptacles placed at the discretion of the Board of Directors of the Association, nor shall the Common Area be used in any way for the drying, shaking or airing of clothing or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and other facilities in the Common Area shall not be obstructed in any way nor shall they be used for other than their intended purposes. Only operable automobiles shall be allowed to remain in any parking lot which may be provided for residents of

the Properties. The Association may require that all other vehicles (including boats and trailers) be parked at all times in a designated area removed from the automobile parking lots. No vehicles of any type shall be permanently or semi-permanently parked on the Properties unless parked in an area designated by the Association for such parking. In general, no activity shall be carried on nor condition maintained by any Owner either on his Lot or upon the Common Area which despoils the appearance of the Properties.

Section 6. Signs. Except with the express permission of the Architectural Committee of the Association, no signs of any kind shall be displayed to the public view on any Lot or on the Common Area except signs used by Declarant or its agent to advertise the properties during the construction and sales period and unit number identification signs required by the Raleigh City Code.

Section 7. Clotheslines, Trash Cans, Etc. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing within the rear ten foot area of each Lot so as to conceal them from view of neighboring Lots and streets. All rubbish, trash and garbage shall be regularly removed from each Lot, and shall not be allowed to accumulate therein. Declarant may require each Lot owner to deposit all rubbish, trash and garbage in dumpsters designated by Declarant.

Section 8. Gardening and Fencing in Common Area. No planting or gardening shall be done (except within individual Lots), and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors of the Association or its designated representatives. Except for the right of ingress and egress, Owners are hereby prohibited and restricted from using any of the Properties outside of exterior building lines, fenced-in or patio areas, except as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the benefit of all Members of the Association, and is necessary for the protection of all Owners.

Section 9. Decks, Screen Doors, Windows. Maintenance, upkeep and repair of any floor surfaces of decks or patios, screens and screen doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the individual Owner and not in any manner the responsibility of the Association. Any action necessary or appropriate to the

proper maintenance and upkeep of the Common Area and facilities, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 10. Pipes, wires, Etc. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or work that will impair the structural soundness or integrity of other improvements or impair any easement, nor do any act or allow any condition to exist which will adversely affect any other Lot or its Owners.

Section 11. Antennas. Without prior written approval and the authorization of the Architectural Committee, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Properties nor upon any structure situated upon the Properties other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 12. Rules and Regulations. Reasonable rules and regulations governing the use of the Properties may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such rules and regulations and amendments thereto shall be approved at a regular or special meeting of the membership before such shall become effective. Copies of all such regulations and amendments thereto shall be furnished by the association to all members upon request.

ARTICLE X

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, greenways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it, such further easements as are requisite for the

convenient use and enjoyment of the Properties.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

ARTICLE XI

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the owner of any lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a lot owner shall reduce the assessment payable by him to the association. If, in the opinion of the association, any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

In no event shall the Association provide interior maintenance of structures not owned by the Association.

ARTICLE XII

TRANSFER OF LOTS

Section 1. Sale or Lease of Units:

(a) In the event that any unit owner desires to sell or lease his Lot or any interest therein, and receives a bona fide satisfactory offer

therefor, he shall, before accepting said satisfactory offer, submit to the Board of Directors in writing by registered mail, return receipt requested, the terms of said offer, the name(s) and address(es) of the offeror(s), and an offer to sell or lease the Lot to the Board at the same price and terms. The Board of Directors shall have a period of ten (10) days (five (5) days in the case of a mortgagee owner) after receipt of said written notice within which to exercise its right to accept such offer and shall have an additional period of not less than twenty (20) days (ten (10) days in the case of a mortgagee owner) within which to close the said transaction. The Board of Directors may elect to purchase or lease such Lot on behalf of all of the remaining Lot owners as a group or, if the remaining Lot owners as a group do not wish to so acquire such Lot, then said Lot may be purchased or leased by the Board of Directors on behalf of any one or more individual Lot owners. In the event the Board of Directors shall elect to accept the offer on behalf of the remaining Lot owners, the cost thereof shall be shared by the remaining Lot owners in the same proportion as common expenses; any profit or loss realized upon the sale or lease by the Board of a Lot so acquired shall likewise be shared, by the remaining Lot owners. In the event that the Board of Directors shall elect to acquire an offered Lot on behalf of anyone or more individual Lot owners, then the cost thereof shall be shared by such acquiring Lot owners in such proportion as they shall agree upon.

(b) In the event that the Board of Directors fails to exercise its right to purchase or lease said Lot, then the Lot owner shall submit to the Declarant in writing, by registered mail, return receipt requested, the terms of said bona fide satisfactory offer, the name(s) and address(es) of the offeror(s) and an offer to convey or lease the Lot to the Declarant at the same price and terms. The Declarant shall have a period of ten (10) days (five (5) days in the case of a mortgagee owner) after receipt of said written notice within which to exercise its right to acquire or lease said Lot and shall have an additional period of not less than twenty (20) days (ten (10) days in the case of a mortgagee owner) within which to close the transaction. Should the Declarant fail or refuse within the applicable period to exercise its option to acquire the Lot at the offered price and terms, then the Lot owner shall have the right to convey or lease said Lot to the offeror whose identity was revealed to the Declarant in said written notice, provided, however, that any such conveyance or lease shall be subject to all the terms,

covenants, limitations, and provisions of this Declaration and By-Laws of the Association. The right given to the Declarant in this subparagraph to purchase or lease a Lot shall only continue for a period of five (5) years from the date of recordation of this agreement, in the Office of the Register of Deeds of Wake County, North Carolina, at which time this right shall terminate and become null and void as to the Declarant.

(c) The Declarant and the Board of Directors upon the request of a conveying unit owner, shall, where applicable, execute in recordable form, instruments indicating compliance with the terms and provisions of this Declaration.

(d) No Lot owner may mortgage his Lot or any interest therein without the approval of the Board of Directors except as to a first mortgage lien made to a bank, life insurance company, or savings and loan association. The Board may, and it is hereby authorized to impose reasonable conditions upon which approval as to any other mortgage shall be given. Each Lot owner who shall mortgage or otherwise encumber his Lot or any interest therein shall furnish to the Board of Directors a copy of all such mortgages, deeds of trust, or other instruments creating such encumbrance.

Section 2. Gift or Devise of Interest: Any owner may give, exchange, devise or bequeath his interest in his Lot to his spouse, his parents, or to any lineal descendants, including adopted children or to a corporation, all classes of stock of which are more than eighty percent (80%) owned by such owner, his spouse, or his lineal descendants, without the prior written consent of the Board or the Declarant. In the event that any owner of a Lot or interest therein shall desire to give, devise, or bequeath any interest in a Lot to a person, firm, or corporation other than the parties hereinabove specifically enumerated or should any person other than the above be entitled to take the property by gift, devise, inheritance, or by operation of law, then such transfer shall, for purposes of this Declaration, be treated as a sale and shall be subject to the provisions of subparagraphs 1(a) through 1(c) above. The price for which the interest in the Lot shall be transferred, shall be such as shall be agreed upon by the transferring owner and the board or the Declarant. In the event such owner and the Declarant of the Board are unable to agree upon a mutually satisfactory price, then the owner

(or the personal representative of a deceased owner, as applicable) shall appoint one appraiser, the Board of Directors or the Declarant, whichever is acquiring an interest in the Lot, shall appoint one appraiser, and each of these appraisers shall appoint a third; any decision of the majority of said appraisers as to the value of such property involved shall be conclusive and binding upon all parties for the purposes of this agreement. Transfer and payment for such property shall be made on such terms and conditions (including terms of payment) as the parties or their appraisers shall agree upon.

Section 3. Other Transfers and Unauthorized Transactions:

(a) If any Lot owner shall acquire his title by any manner in contravention of the above or in any manner not heretofore considered in the foregoing subsections, the continuance of his ownership of his Lot shall be subject to the right of purchase of said Lot by the Board and/or the Declarant. Should the Board and/or the Declarant elect to purchase any Lot so acquired, the purchase price shall be that as shall be agreed upon between the Board of Directors and/or the Declarant, and the Lot owner. In the event the Lot owner and the Board of Directors and/or the Declarant are unable to agree to a purchase price of the Lot, the Lot owner shall appoint one appraiser, the Board or the Declarant, whichever is acquiring an interest in the Lot, one appraiser, and each of the appraisers shall appoint a third; any decision of the majority of said appraisers as to the value of said Lot shall be conclusive and binding upon all parties for the purposes of this agreement. Transfer and payment for such property shall be made upon such terms and conditions, including terms of payment, as the parties or their appraisers shall agree upon.

(b) Any sale, mortgage, or lease which is not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Board of Directors.

ARTICLE XIII

ACCESS TO LOTS

Section 1. Right of Access. A Lot owner shall grant a right of access to his Lot to the Managing Agent and/or any other person authorized by the Board of Directors of the Association or the Managing Agent for the purpose of

making inspections or for the purpose of correcting any condition originating in his Lot and threatening another Lot or a common area or facility, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or to correct any condition which violates the provisions of any mortgage or deed of trust covering another Lot, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Lot owner. In case of an emergency, such right of entry shall be immediate, whether the Lot owner is present at that time or not.

Section 2. Right of Entry for Maintenance. The Board of Directors of the Association has the right of entering any Lot when necessary in connection with pest control, any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Lot owner as practicable and any damage caused thereby shall be repaired by the Board and such expenses for pest control, maintenance or construction shall be treated as a common expense. Such right of entry shall be immediate, whether the Lot owner is present at that time or not.

ARTICLE XIV

SPECIAL RELATIONSHIP OF MORTGAGEES

Unless at least two-thirds (2/3) of the first mortgagees of units hereunder (based upon one vote for each first mortgage owned) or unit owners (other than the declarant) have given their prior written approval, the Association shall not be entitled to by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer with the meaning of this clause.)

First mortgagees of units hereunder may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of the policy, for such common property and first mortgagees of units hereunder making such payment shall be owed immediate reimbursement therefore from the Association.

A first mortgagee of a unit hereunder shall, upon request, be entitled to written notification from the Association of any default in performance by any individual unit owner borrower's from said mortgagee of any obligation to the Association which is not cured within sixty (60) days.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. Prior to recordation of any Amendment, the Association shall receive approval from the City of Raleigh Attorneys Office unless the City of Raleigh Attorneys Office has failed to comment thirty (30) days after receiving the proposed Amendment.

Section 4. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF RIVER BIRCH SUBDIVISION

By authority of its Board of Directors, River Birch Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of seventy-five (75%) percent of the Lots of River Birch Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of River Birch Subdivision.

RIVER BIRCH
HOMEOWNERS ASSOCIATION

by: _____
President

ATTEST:

Secretary

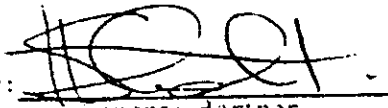
(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided however, that no such amendment shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in River Birch Subdivision.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15th day of December, 1980.

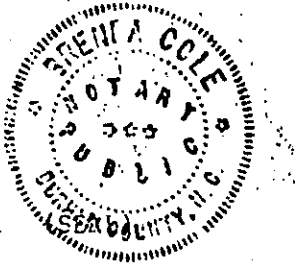
RIVER BIRCH ASSOCIATES

By: 
General Partner

NORTH CAROLINA
 DURHAM
 WAKE COUNTY

I, Brenda Cole, Notary Public for said County and State, do hereby certify that HAROLD S. LICHTIN personally appeared before me this day and acknowledged the due execution of the foregoing Declaration of Covenants, Conditions and Restrictions for River Birch Subdivision.

WITNESS my hand and official seal this 15th day of December 1980.



Brenda Cole
 Notary Public

My Commission Expires:

May 11, 1985

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate _____ of Brenda Cole

 _____ Notar(y)(ies) Public is
 (are) certified to be correct. This instrument and this certificate are duly registered at the date and
 time and in the book and page shown on the first page hereof.

R. B. MCKENZIE, JR., Register of Deeds

By Charles A. Pullin
 Asst. Deputy Register of Deeds

EXHIBIT A

BEGINNING at the point of intersection of the center line of Marsh Creek and the center line of the 60 foot right of way of Old Wake Forest Road, thence North 18 degrees 23 minutes 55 seconds West 35.01 feet to a point; thence North 64 degrees 28 minutes 56 seconds West 1.41 feet to a point in the western edge of the right of way of Old Wake Forest Road; thence with the western edge of the right of way of Old Wake Forest Road North 37 degrees 48 minutes 22 seconds East 109.13 feet to a point of curve; thence in a northerly direction along a curve to the left with a radius of 524.50 feet, a distance along the arc of said curve of 447.16 feet to a point; thence North 11 degrees West 347.22 feet to a new iron pipe marking the terminus of the western edge of the 60 foot right of way of Forest Oak Drive; thence along the terminus of the right of way of Forest Oak Drive and beyond North 79 degrees 27 minutes East 64.91 feet to a new iron pipe; thence South 50 degrees 16 minutes 34 seconds East 427.92 feet to a PK nail located in the center of the right of way of Old Wake Forest Road; thence with the center of the right of way of Old Wake Forest Road South 37 degrees 48 minutes 22 seconds West 786.23 feet to the POINT OF BEGINNING, containing 3.08 acres according to a plat of survey of the property of River Birch Associates dated December 2, 1980, prepared by Al Prince and Associates, P.A. Also, being Section 1 according to a map recorded in Book of Maps 1986, Page 1066 of the Wake County Registry.

BOOK 2887 PAGE 331

EXHIBIT B

All of the property of River Birch Associates according to a plat of survey dated December 2, 1980 prepared by Al Prince and Associates, P.A. and being also all of Section 1 according to a map recorded in Book of Maps 1980 , Page 1066 of the Wake County Registry with the exception of the designated lots 1 through 15 inclusive as shown on said plat.

300 2971 PAGE 640

PREPARED by AND RETURN TO
THOMAS J. STEVENS, P.A.
P.O. BOX 2775
DURHAM, N.C. 27705

PRESENTED
FOR
REGISTRATION

NORTH CAROLINA

WAKE COUNTY

NOV 2 1 23 PM '81

R.B. MCKENZIE, JR.
REGISTER OF DEEDS
WAKE COUNTY, N.C.

FIRST AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
RIVER BIRCH SUBDIVISION

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions For The River Birch Subdivision is made and entered into by all of the lot owners of River Birch Subdivision and River Birch Associates, a North Carolina limited partnership, the original declarant in the said Declaration of Covenants, Conditions and Restrictions For The River Birch Subdivision, on this 19th day of October, 1981, for the purposes hereinafter stated:

STATEMENT OF FACTS

The Declaration of Covenants, Conditions and Restrictions For The River Birch Subdivision (hereinafter for convenience referred to as the "Declarant"), was duly recorded in Book 2887, Page 307, on December 16, 1980, in the Office of the Register of Deeds of Wake County, North Carolina. The parties hereto now desire to reaffirm the Declaration, subject additional property to the Declaration and to make other amendments to the Declaration.

NOW, THEREFORE, the undersigned, being all of the lot owners of River Birch Subdivision and River Birch Associates, do hereby amend the Declaration of Covenants, Conditions and Restrictions For The River Birch Subdivision as recorded in Book 2887, Page 307, in the Office of the Register of Deeds of Wake County, North Carolina:

1. The following property is hereby held, conveyed, hypothecated, owned, encumbered, used, occupied and improved subject to and according to the

Declaration recorded in Book 2887, Page 307 through 331, inclusive, of the Wake County Registry, together with the By-Laws and Articles of Incorporation of River Birch Homeowners Association, all of which terms and conditions are hereby incorporated by reference:

All of the property of River Birch Associates according to plats of survey prepared by Al Prince & Associates, P.A., dated December, 1980, January, 1981, March, 1981, and July, 1981, and respectively recorded in Book of Maps 1980, Page 1066, Book of Maps 1981, Page 96, Book of Maps 1981, Page 264, and Book of Maps 1981, Page 751, of the Wake County Registry. The subject property contains Lots 1 through 41, inclusive, of River Birch Subdivision, being all of Sections One and Two thereof. The common area as contemplated herein consists of all of said property with the exception of the designated Lots 1 through 41, inclusive, as shown on said plats.

The parties hereto further agree that River Birch Associates may subject and annex additional property adjacent to the River Birch Subdivision to the Declaration without the consent of lot owners or members of the River Birch Homeowners Association within five (5) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accordance with the general plan heretofore approved by them. The addition shall be made by filing of record an amendment to the Declaration with respect to the additional property which shall extend the scheme of the covenants and restrictions of the Declaration to such property or by adopting the Declaration in whole or in part by reference. Such amendment may contain such complementary additions and modifications of the Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of the Declaration. In no event, however, shall such amendment revoke, modify or add to the covenants established by the Declaration with the existing property. The amendments contemplated herein shall be made by River Birch Associates without the approval of lot owners or River Birch Homeowners Association notwithstanding any provision to the contrary in Article XV of the Declaration or under any other provision of the Declaration.

2. Sub-paragraph (a) of Section 3 of Article V is hereby deleted in its entirety and the following new sub-paragraph (a) of Section 3 of Article V is adopted in lieu thereof:

(a) From and after January 1, 1981, the maximum annual assessment may be increased effective January 1st of each year without a vote of the membership not to exceed in any event five per cent (5%) of the assessment for the previous year.

3. Sub-paragraph (b) of Section 3 of Article V is hereby deleted in its entirety and the following new sub-paragraph (b) of Section 3 of Article V is substituted in lieu thereof:

(b) From and after January 1, 1981, the maximum annual assessments may be increased above that established above by a vote of the members for the next year and, at the end of each year thereafter, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days not more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

4. Article VI is hereby deleted in its entirety and reserved for future use.

5. Section 10 of Article IX is hereby deleted in its entirety and reserved for future use.

6. Article XII is hereby deleted in its entirety and reserved for future use.

7. Except as herein expressly modified, the Declaration of Covenants, Conditions and Restrictions for the River Birch Subdivision, as amended, including all covenants, exhibits, rules and regulations, restrictions and by-laws which are a part of said Declaration, are hereby ratified and re-affirmed in all respects.

IN WITNESS WHEREOF, the parties have affixed their hands and seals the day and year first above written.

LOT NO. 1

XXXXXXXXXXXX

Thomas J. Stevens (SEAL)
THOMAS J. STEVENS

CAROLINA BUILDERS CORPORATION
By: [Signature]
President

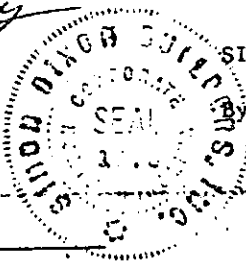
LOT NO. 2

(Corporate Seal)
ATTEST:
[Signature]
Secretary

(Corporate Seal)

ATTEST:

[Signature]
Asst. Secretary



SIMON DIXON BUILDERS, INC.

[Signature]
President

LOT NO. 3

LOT NO. 4

LOT NO. 9

LOT NO. 13

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Leslie Pierce Johnson, III (SEAL)
LESLIE PIERCE JOHNSON, III

Amy Hanson Johnson (SEAL)
AMY HANSON JOHNSON

Sharon H. Copland (SEAL)
SHARON HINSHAW COPLAND

David Stuart Gaines (SEAL)
DAVID STUART GAINES

Martha Ryder Gaines (SEAL)
MARTHA RYDER GAINES

Jay Luke Allen (SEAL)
JAY LUKE ALLEN

RIVER BIRCH ASSOCIATES, a North
Carolina Limited Partnership

By: [Signature]
General Partner

NORTH CAROLINA

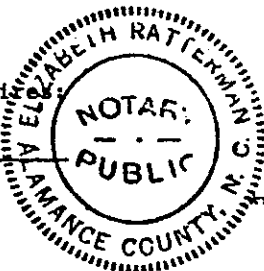
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that THOMAS J. STEVENS personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19th day of October, 1981.

My Commission Expires

10/23/84



Elizabeth Ratterman
Notary Public

NORTH CAROLINA

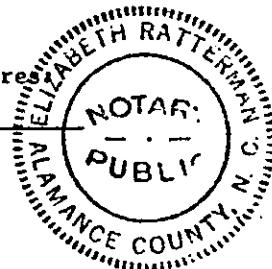
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that PAUL H. CASCY personally appeared before me this day and acknowledged that he is Secretary of CAROLINA BUILDERS CORPORATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and notarial seal, this the 19th day of October, 1981.

My Commission Expires

10/23/84



Elizabeth Ratterman
Notary Public

NORTH CAROLINA

BOOK 2971 PAGE 644

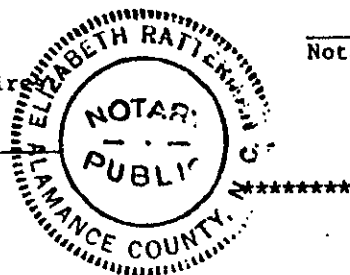
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that LESLIE PIERCE JOHNSON, III and wife, AMY HANSON JOHNSON, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19th day of October, 1981.

My Commission Expires

10/23/84



Elizabeth Ratterman
Notary Public

NORTH CAROLINA

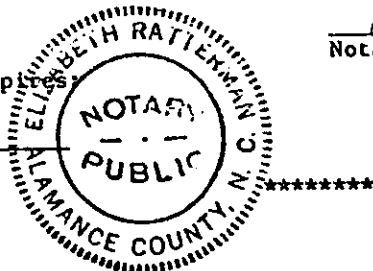
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that SHARON HINSHAW COPLAND personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19th day of October, 1981.

My Commission Expires

10/23/84



Elizabeth Ratterman
Notary Public

NORTH CAROLINA

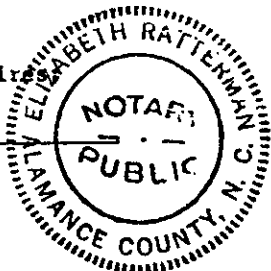
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that DAVID STUART GAINES and wife, MARTHA RYDER GAINES, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19th day of October, 1981.

My Commission Expires

10/23/84



Elizabeth Ratterman
Notary Public

NORTH CAROLINA

BOOK 2971 PAGE 645

WAKE COUNTY

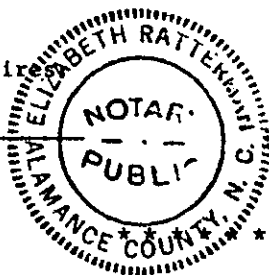
I, the undersigned Notary Public, do hereby certify that JAY LUKE ALLEN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19th day of October, 1981.

Elizabeth Ratterman
Notary Public

My Commission Expires

10/23/84



NORTH CAROLINA

WAKE COUNTY

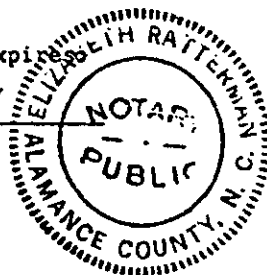
I, the undersigned Notary Public, do hereby certify that SUSAN W SNYDER personally appeared before me this day and acknowledged that she is Secretary of SIMON DIXON BUILDERS, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Asst. Secretary.

Witness my hand and notarial seal, this the 19th day of October, 1981.

Elizabeth Ratterman
Notary Public

My Commission Expires

10/23/84



NORTH CAROLINA

WAKE COUNTY

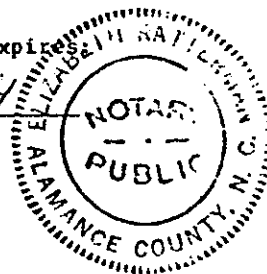
I, the undersigned Notary Public, do hereby certify that HAROLD LICHTIN personally appeared before me this day and acknowledged that he is a General Partner of RIVER BIRCH ASSOCIATES, a North Carolina Limited Partnership.

Witness my hand and notarial seal, this the 19th day of October, 1981.

Elizabeth Ratterman
Notary Public

My Commission Expires

10/23/84



BOOK 2971 PAGE 646

CERTIFICATION OF VALIDITY OF AMENDMENT

TO

COVENANTS, CONDITIONS AND RESTRICTIONS OF RIVER BIRCH SUBDIVISION

By authority of its Board of Directors, River Birch Homeowners Association hereby certifies that the foregoing instrument has been duly executed the the Owners of seventy-five percent (75%) of the Lots of River Birch Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of River Birch Subdivision.

RIVER BIRCH HOMEOWNERS ASSOCIATION

By: [Signature]
President/

ATTEST:

[Signature]
Secretary

SEAL

NORTH CAROLINA

WAKE COUNTY

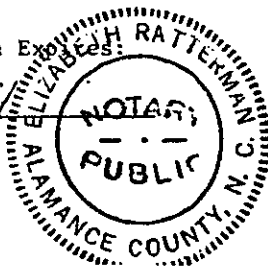
I, Elizabeth Ratterman, a Notary Public in and for the County and State aforesaid, do hereby certify that Kathy Pruitt personally came before me this day and acknowledged that she is Secretary of RIVER BIRCH HOMEOWNERS ASSOCIATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Kathy as its Secretary.

Witness my hand and notarial seal, this the 19th day of October, 1981.

Elizabeth Ratterman
Notary Public

My Commission Expires

10/23/84



NORTH CAROLINA -- WAKE COUNTY

The foregoing certificate of Elizabeth Ratterman,
Notary Public

Notar(y)(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

R. B. MCKENZIE, JR., Register of Deeds

By [Signature]
Deputy Register of Deeds